

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL)	MDL No. 146
INDUSTRY AVERAGE)	
WHOLESALE PRICE LITIGATION)	CIVIL ACTION: 01-CV-12257 PBS
)	
)	Judge Patti B. Saris
THIS DOCUMENT RELATES TO)	
ALL CLASS ACTIONS)	Chief Magistrate Judge
)	Marianne B. Bowler

DECLARATION OF PETER K. HUSTON IN SUPPORT OF OPPOSITION OF
MCKESSON CORPORATION TO PLAINTIFFS MOTION TO COMPEL THE
PRODUCTION OF DOCUMENTS

Peter K. Huston declares:

1. I am an attorney admitted into practice before the courts of the State of California. I am a partner in the litigation department of the San Francisco office of Latham & Watkins, L.L.P. I make the statements in this declaration of my own knowledge.
2. I was retained by McKesson Corporation ("McKesson") to respond to a February 16, 2004, subpoena with which McKesson had been served. In response to that subpoena, on March 15, 2004, I sent a letter making objections under F.R. Civ. P. 45 to the indicated addressee, Elizabeth Fegan Hartwig, Esquire. Ms. Hartwig had previously granted an extension to that date.
3. Subsequently I spoke with Ms. Hartwig, who indicated that it was possible that plaintiffs would revise the subpoena and that I should not take any action until she

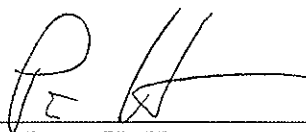
contacted me.

4. I heard nothing further until May 6, 2004, when I received a letter from Ms. Hartwig enclosing an Amended Subpoena to McKesson Corporation and inquiring whether I would accept service on behalf of McKesson. A true copy is attached hereto as Exhibit A. By this time, I was aware of a potential conflict of interest that would prevent me from representing McKesson Corporation. Therefore, I never advised Ms. Hartwig that I would accept service of the subpoena.

5. On or about June 11, 2004, I was called by Scott George, Esquire, another of plaintiffs' attorneys. Mr. George inquired about the Amended Subpoena. I indicated that the subpoena had never been served and that I would be unable to represent McKesson with respect to the subpoena due to a conflict of interest. Mr. George informed me that the Amended Subpoena was identical except for an expanded list of identified drugs. Mr. George agreed that my previous objection letter would apply to the amended subpoena as well. Additionally, I gave Mr. George the telephone number of Kimbir Tate, who is the paralegal in the McKesson Corporation Law Department who handles document production.

6. On or about June 16, 2004, I sent the letter attached hereto as Exhibit B to Mr. George, confirming the matters we had discussed over the telephone. Exhibit B accurately reflects the events of that conversation.

I declare the foregoing to be true under penalty of perjury under the laws of the State of California, and that this declaration was signed at San Francisco, California on September 3, 2004.



Peter K. Huston

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EXHIBIT A

T H E | W E X L E R | F I R M ^{LLP}

May 5, 2004

VIA FEDERAL EXPRESS

Peter K. Huston
Latham & Watkins LLP
505 Montgomery St., Suite 1900
San Francisco, CA 94111-2562

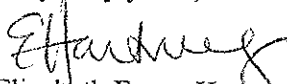
RE: *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, MDL
No. 1456

Dear Mr. Huston:

Enclosed please find an Amended Subpoena to your client McKesson Corporation. The only amendment to the subpoena is a revised list of drugs set forth in Exhibit A, pursuant to certain recent rulings by the Court in the above case. Please advise by the close of business Friday, May 7, 2004 whether you will accept service on behalf of your client.

We appreciate your anticipated professional courtesy.

Very truly yours,


Elizabeth Fegan Hartweg

EFH:lyr

Enclosure

cc: Kenneth A. Wexler
Anthony J. Sievert

Contact information:

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EXHIBIT B

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LATHAM & WATKINS LLP

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File No. 021532-0025

June 16, 2004

Scott George, Esq.
Sheller, Ludwig & Badey P.C.
1528 Walnut Street, Third Floor
Philadelphia, Pennsylvania 19102

Re: In re: Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456

Dear Mr. George:

This will confirm our discussion of last week regarding the May 5, 2004 subpoena to McKesson in the above-referenced case. We are trying to track down whether McKesson was ever formally served with this subpoena. In any event, you indicated that the subpoena was identical to the previous subpoena served on McKesson with the exception of a revised list of drugs in Exhibit A. You agreed that the objection letter that McKesson's sent in response to the previous subpoena would suffice for purposes of the May 5 subpoena. As I mentioned to you, I will be unable to represent McKesson with respect to this subpoena due to a conflict. This morning I left you a telephone message letting you know that until McKesson retains outside counsel I suggest you address inquiries about the subpoena to Kimbir Tate in the McKesson Law Department. If you have any questions please do not hesitate to contact me.

Very truly yours,



Peter K. Huston
of LATHAM & WATKINS LLP

cc: Kimbir Tate